

**DISMISS; and Opinion Filed May 17, 2018.**



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

---

**No. 05-18-00259-CR**

---

**CHAD ERIC SLOAN, Appellant  
V.  
THE STATE OF TEXAS, Appellee**

---

**On Appeal from the 86th Judicial District Court  
Kaufman County, Texas  
Trial Court Cause No. 17-10089-86-F**

---

**MEMORANDUM OPINION**

Before Justices Lang-Miers, Evans, and Schenck  
Opinion by Justice Schenck

Chad Eric Sloan appeals the trial court's judgment convicting him of possession of methamphetamine in an amount of one gram or more but less than four grams. Concluding appellant's notice of appeal was untimely, we dismiss the appeal for want of jurisdiction.

A defendant perfects his appeal by filing with the trial court clerk, within thirty days after the date sentence was imposed, or within ninety days after sentencing if the defendant timely filed a motion for new trial, a written notice of appeal showing his or her desire to appeal. *See* TEX. R. APP. P. 25.2(b), 26.2(a). A timely perfected notice of appeal is required to invoke this Court's jurisdiction. *Ex parte Castillo*, 369 S.W.3d 196, 198 (Tex. Crim. App. 2012). In the absence of a timely perfected notice of appeal, the Court must dismiss the appeal. *Id.*

In this case, the trial court entered judgment on January 30, 2018. Thus, appellant's motion for new trial was due on March 1, 2018.<sup>1</sup> *See* TEX. R. APP. P. 21.4(a). Appellant filed a motion for new trial one day late on March 2, 2018.

Because the motion for new trial was untimely, it did not extend to ninety days the time to file appellant's notice of appeal. *See* TEX. R. APP. P. 26.2(a)(2). Thus, appellant's notice of appeal was due on March 1, 2018. *See* TEX. R. APP. P. 26.2(a)(1). Appellant filed his notice of appeal on March 2, 2018.

The rules of appellate procedure allow the time to file a notice of appeal to be extended if the party files, within fifteen days of the filing deadline, both the notice of appeal and a motion to extend the time to file the notice of appeal. *See* TEX. R. APP. P. 10.5(b), 26.3. Any motion to extend the time to file the notice of appeal would be due in this case on or before March 16, 2018. Appellant filed an untimely motion to extend on March 18, 2018.

By letter dated March 30, 2018, the Clerk of the Court informed the parties of the apparent jurisdictional defect and directed them to file letter briefs addressing the Court's jurisdictional questions and, if necessary, a supplemental record for any necessary information not already in the appellate record. On April 13, 2018, appellant filed a letter brief conceding that both the notice of appeal and the motion to extend were untimely. Appellant explained that appellant's trial counsel had miscalculated the due date and had believed the notice of appeal was timely. Appellant further explained that the motion to extend was untimely filed because appellate counsel had suffered a technical issue with her e-filing system. Appellant urged the Court to apply rule of appellate procedure 2 to either grant his motion to extend the time to file the notice of appeal or to extend

---

<sup>1</sup> We note that the time period for filing a motion for new trial (and the notice of appeal) runs from "the date when the trial court imposes or suspends sentence in open court." *See* TEX. R. APP. P. 21.4(a). This date may correspond to the date the trial court entered the written judgment or might be an earlier date. The reporter's record has not yet been filed in this appeal, and thus the actual date of sentencing is unknown. Because the sentencing must have occurred no later than the date of the judgment, appellant's motion for new trial and notice of appeal would be untimely in any event. For calculating due dates, we will assume January 30, 2018 is the date of sentencing.

the time to file his motion for new trial so as to make it—and therefore the notice of appeal—timely. *See* TEX. R. APP. P. 2 (allowing appellate court to suspend operation of the appellate rules of procedure “to expedite a decision or for other good cause. . .”). On April 18, 2018, appellant filed a supplemental motion to extend the time to file his notice of appeal urging application of rule 2 to permit his appeal.

In its April 27, 2018 letter brief, the State responded that because both appellant’s notice of appeal and his motion to extend the time to file his notice of appeal were untimely, the Court has no jurisdiction over the appeal. The State also argued that the Court lacks jurisdiction to use rule 2 to suspend the rules in appellant’s favor. We agree with the State.

When an appellate court’s jurisdiction has not been invoked with a timely notice of appeal, it may not use rule 2 to suspend the rules so as to bootstrap itself into having jurisdiction. *See Slaton v. State*, 981 S.W.2d 208, 210 (Tex. Crim. App. 1998) (per curiam); *Olivo v. State*, 918 S.W.2d 519, 523 (Tex. Crim. App. 1996).<sup>2</sup> Because appellant’s notice of appeal and motion to extend the time to file the notice of appeal were untimely, we conclude we have no jurisdiction over this appeal. *See* TEX. R. APP. P. 26.2(a)(1); *Castillo*, 369 S.W.3d at 198.

We deny appellant’s motion to extend time to file the notice of appeal and supplemental motion to extend time to file the notice of appeal.

We dismiss the appeal.

Do Not Publish  
TEX. R. APP. P. 47

/David J. Schenck/  
\_\_\_\_\_  
DAVID J. SCHENCK  
JUSTICE

180259F.U05

---

<sup>2</sup> Appellant’s remedy does not lie with this Court, but rather with the trial court’s habeas authority to grant an out-of-time appeal. *See Rodriguez v. Court of Appeals, Eighth Supreme Judicial Dist.*, 769 S.W.2d 554, 558–59 (Tex. Crim. App. 1989).



**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

CHAD ERIC SLOAN, Appellant

No. 05-18-00259-CR      V.

THE STATE OF TEXAS, Appellee

On Appeal from the 86th Judicial District  
Court, Kaufman County, Texas  
Trial Court Cause No. 17-10089-86-F.  
Opinion delivered by Justice Schenck.  
Justices Lang-Miers and Evans  
participating.

Based on the Court's opinion of this date, the appeal is **DISMISSED**.

Judgment entered this 17th day of May, 2018.